

HUMAN SERVICES BOARD

INTRODUCTION

FINDING OF FACT

1 PATH orally represented to the hearing officer that it would sign the stipulation and forward it to the Board but never did so. Rather than cause further delay for the petitioner, these findings are made based on the oral representations of PATH's attorney and Exhibits introduced by PATH and not objected to by the petitioner.

2. On July 1, 2001, the ANFC program became the Reach Up program due to a change in state law.

3. The court ordered petitioner's ex-husband to pay \$256.00 per month in child support. This amount, if paid, goes directly to the Office of Child Support which then forwards the money to PATH.

4. In calculating her Reach Up grant, PATH disregarded \$50 in child support per month. This amount was called the "pass through" and is now called the "family share payment".

5. Prior to September 1, 2001, petitioner received the \$50.00 "family share payment".

6. On or about September 1, 2001, petitioner was transferred into the post secondary education program from Reach Up, because the law no longer allows someone on Reach Up to count hours spent attaining a college education towards the work requirement.

7. After September 1, 2001, petitioner no longer received the \$50.00 "family share payment".

8. The purpose of creating the post secondary education program was to allow low-income Vermonters to continue to have the opportunity to go to college, which was no longer allowed under the federal law. The stipend system was designed to look more like an educational grant or scholarship program

than a traditional welfare program. The intent was to destigmatize the Post Secondary Education program.

9. When the petitioner applied for the Post Secondary Education program, she agreed to assign her child support rights to the Vermont Office of Child Support and to accept the living expense stipend in lieu of Reach Up financial assistance. This latter condition was reiterated in the notice of acceptance sent to her on August 8, 2001.

ORDER

The decision of PATH not to disregard the first \$50 of child support received by the petitioner each month in its calculation of her PSE program stipend is reversed.

REASONS

As the parties agreed in their stipulation, the Vermont legislature adopted the PSE Program as a method to continue to provide support to financially needy parents in pursuit of post-secondary education after changes in federal welfare laws made it impossible to continue such persons in the RUFA program. See 33 V.S.A. § 1122. That statute gives the PATH Commissioner the authority to establish rules for the separate state program, 33 V.S.A. § 1122(a), and provides further that

the amount of the program's living expense stipend shall be determined using financial assistance rules with the following modifications:

(1) The amount of the living expense stipend shall be determined at the time of the financial eligibility determination for admission into the program, and annually thereafter within ninety-days before the beginning of the participant's academic year.

(2) The maximum living expense stipend for a family with three or fewer members shall be the amount that is equal to the ratable reduced sum of the Reach Up basic needs allowance for a household of three, plus the maximum monthly housing allowance for the county in which they reside.

(3) The maximum living expense stipend allowed for a family with more than three members shall be the amount that is equal to the ratably reduced sum of the Reach Up basic needs allowance for a household of four, plus the maximum monthly housing allowance for the county in which they reside.

33 V.S.A. § 1122

The regulations adopted pursuant to this statute describe the "living expense stipend" as follows:

- A. Participating parents determined to be otherwise eligible for financial assistance under the applicable Reach Up regulations for income and resources shall receive a monthly living expense stipend equivalent to the Reach Up financial assistance amount for which she or he would be eligible. The amount of the stipend shall be determined and verified by the Reach Up rules and regulations in effect at the time of application, with the following modifications:

1. The amount of the living expense stipend shall be determined at the time of admission into the PSE program and annually thereafter within the ninety-day period prior to the beginning of each academic term that marks an anniversary of the participating parent's participation in the PSE program.
2. The maximum living expense stipend for a family with three or fewer members shall be the amount that is equal to the ratably reduced sum of the Reach Up basic needs allowance for a household of three, plus the maximum monthly housing allowance for the county in which they reside.
3. The maximum living expense stipend allowed for a family with more than three members shall be the amount that is equal to the ratably reduced sum of the Reach Up basic needs allowance for a household of four, plus the maximum housing allowance for the county in which they reside.
4. Initial living expense stipend shall be effective on the first day of the calendar month in which the participating parent begins attending classes in the degree program, unless the participating parent falls within the exception in 2408.A.5. A family may not receive a living expense stipend and a Reach Up financial assistance payment for the same calendar month.
5. When a parent in a Reach Up family has been accepted into the PSE program, the PSE program must notify PATH no later than the 10th day of the month before the initial living expense stipend payment so that the Reach Up financial assistance grant may be terminated before the beginning of the month of the initial stipend.

Exception: if the deadline for the decision application was extended pursuant to 2403.10.A. and there is insufficient time to terminate Reach Up financial assistance prior to the first day of the month in which the

participating parent begins attending classes in the undergraduate degree program, Reach Up financial assistance shall continue for that month in lieu of the living expense stipend. The living expense stipend shall begin in the month following termination of Reach Up financial assistance.

6. Eligibility for the living expense stipend payments ends with the calendar month in which the participating parent begins an interruption in PSE program participation or receives the two-year or four-year degree specified in the PSE plan.

PSE Program 2408

The regulation follows the statutory directive with regard to the determination of the amount of the living expense stipend. Again, as the parties stipulated, the PSE program differs from Reach Up in several respects in that it establishes two levels of payments based on family size, sets the level on an annual basis without regard to other income and begins and ends at a time concurrent with engagement in PSE activities. However, in all other respects, the regulation makes it clear that the "monthly living expense stipend" is to be "equivalent to the Reach Up financial amount for which [participating parents] would be eligible". PSE program § 2408A.

Reach Up financial eligibility is determined by engaging in a three-step process. W.A.M. 2240.1. The whole process

starts off with a determination of income. That part of the regulation provides as follows:

Determine the amount of the assistance group's gross earned and unearned income, including the income of children, except that earned income of a dependent child who is a full-time student may be excluded for up to six months in a calendar year. Any support predicted or collected by the Office of Child Support except for the \$50 disregard must also be included, as must any state earned income credit (EIC) received. Any SSI/AABD or Reach Up payments are not included. Business expenses (self-employed only) are deducted from gross business receipts.

W.A.M. 2240.1(a)(1)
(Emphasis Supplied.)

This income is first compared to 185 percent of the basic need and shelter expenses of the group and then subjected to standard employment and earned income disregard standards. See W.A.M. 2240.1 (a)(b) and(c). If the income meets up to the standards and moves from step to step, eligibility is confirmed and a payment amount can be determined. The final Reach Up assistance payment amount is equal to the "budgetary deficit" between the applicant's "payment standard"² and the applicant's net income. W.A.M. 2241.

The applicant's net income used in this final calculation is the gross income minus all the allowable deductions. If

² The payment standard is a combination of basic needs, special needs and a shelter allowance subjected to a ratable reduction. See W.A.M. 2245.2, 2245.24 and 2245.3.

the first \$50 of child support received is made a part of the gross income, it would mean that the payment standard would be \$50 less. However, the regulations governing the determination of Reach Up assistance do disregard that \$50 as was noted above. The result is a Reach Up payment level which is \$50 higher for families who get child support of at least \$50 per month.

There is nothing in the PSE Program regulations or the statute authorizing it which indicates that the \$50 "family share payment" is to be counted as income and not disregarded as it is in the RUFA program. The legislature and PATH could have adopted any standard they wished to determine the amount of benefit to be paid out under this strictly state-funded program. The standard they chose was to calculate benefit levels in the same manner that RUFA benefits are calculated with certain specified exceptions. The calculation of RUFA benefits requires a disregard of the first \$50 in child support benefits. This was not a feature modified by the PSE Program regulations. As such, PATH is required by its own PSE Program regulation to follow the RUFA regulation, and so it must disregard the \$50 from inclusion as gross earned income. The decision of the Department is reversed as it is inconsistent with its own regulations.

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